

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

AMANDA HARRELL

RESPONDENT,

**v.
DIRECTOR OF REVENUE**

APPELLANT.

DOCKET NUMBER WD78670

DATE: May 3, 2016

Appeal From:

Clay County Circuit Court
The Honorable Karen L. Krauser, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Attorneys:

Jeffrey S. Eastman, Gladstone, MO, for respondent.

Daniel N. McPherson, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

AMANDA HARRELL,

RESPONDENT,

v.

DIRECTOR OF REVENUE,

APPELLANT.

No. WD78670

Clay County

Before Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

The Director of Revenue (the "Director") appeals a trial court's judgment setting aside the revocation of Amanda Harrell's diving privileges. The Director argues that the trial court erred in excluding the results of Harrell's blood alcohol test.

WE REVERSE AND REMAND

Division Three holds:

- (1) The trial court erred in excluding the blood alcohol test because the Director failed to show that the simulator used to test the breath analyzer had been calibrated against a National Institute of Standards and Technology approved thermometer in connection with the simulator's maintenance after Harrell's blood alcohol test was administered. Any failure to calibrate after a blood alcohol test is administered goes to weight of the evidence not admissibility.
- (2) The trial court erred in excluding the blood alcohol test because the printouts attached to the breath analyzer machine's maintenance simulator test were illegible.

Opinion by Gary D. Witt, Judge

May 3, 2016

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